

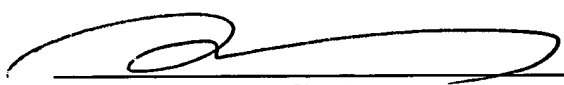
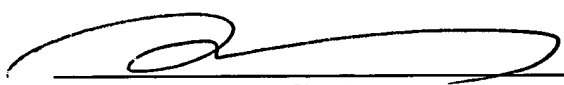
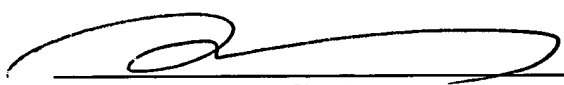


Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)

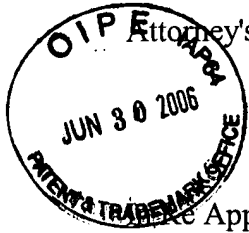
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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)										
<p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]</p> <p>on _____</p> <p>Signature <u>C. Clinkenbeard</u></p> <p>Typed or printed name <u>Cheri Clinkenbeard</u></p>		Application Number	Filed									
		09/734,839	12/11/00									
		First Named Inventor										
		Ludtke										
		Art Unit	Examiner									
		2165	Mizrafr, D.									
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <table border="0"><tr><td><input type="checkbox"/> applicant/inventor.</td><td></td></tr><tr><td><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</td><td><u>Sheryl Sue Holloway</u> Typed or printed name</td></tr><tr><td><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>37,850</u></td><td><u>(408) 720-8300</u> Telephone number</td></tr><tr><td><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</td><td><u>June 29, 2006</u> Date</td></tr></table> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <table border="1"><tr><td><input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.</td></tr></table>				<input type="checkbox"/> applicant/inventor.		<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)	<u>Sheryl Sue Holloway</u> Typed or printed name	<input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>37,850</u>	<u>(408) 720-8300</u> Telephone number	<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____	<u>June 29, 2006</u> Date	<input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.
<input type="checkbox"/> applicant/inventor.												
<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)	<u>Sheryl Sue Holloway</u> Typed or printed name											
<input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>37,850</u>	<u>(408) 720-8300</u> Telephone number											
<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____	<u>June 29, 2006</u> Date											
<input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.												

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



Attorney's Docket No.: 080398.P416

## Patent

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

~~LIBRARY~~ Application of:

Ludtke, et al.

Serial No.: 09/734,839

Filed: December 11, 2000

For: A Secure And Convenient Method and Apparatus For Storing And Transmitting Telephony-Based Data

**Examiner: Diane D. Mizrahi**

Art Unit: 2165

Confirmation No.: 4722

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

## PRE-APPEAL BRIEF REQUEST FOR REVIEW

In response to the final Office Action mailed March 28, 2006, Applicant respectfully requests review of the Examiner's rejections of claims 1-23 under 35 U.S.C. § 101.

### Rejection To Be Reviewed

***Rejection under 35 U.S.C §101***

Claims 1-23 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter because the final result is not useful, tangible and concrete.

### **Summary of Claimed Subject Matter**

Applicant's claimed invention enables a user to access data on a second remote source by using private access information received from a first remote source. A user device receives the private access information from the first remote source. The device subsequently sends the

received private access information via a voice network to the second remote source.

[Specification: page 67, line 15 through page 69, line 19]

### **Summary of Prosecution History**

Applicant received a Notice of Allowance for the present application mailed May 20, 2005, which was withdrawn on June 24, 2005 prior to payment of the issue fee. On September 1, 2005, the Examiner rejected claims 1-23 under 35 U.S.C. § 102 over U.S. Patent 6,895,558 to Loveland (newly cited). In a response filed January 31, 2006, Applicant amended the claims and argued that Loveland did not anticipate the claimed invention. On March 28, 2006, the Examiner withdrew the rejections of the pending claims over all the previously presented art and, for the first time since prosecution began on October 3, 2002, rejected claims 1-23 as being directed to non-statutory subject matter. In particular, the Examiner requested that Applicant “include in Applicant’s claimed limitations the following:

What is the practical application?

What is the result?

What is [the] final result that is concrete, useful and tangible?”

### **Argument**

Applicant respectfully submits that the current claims contain limitations that answer the Examiner’s questions, and that these limitations have been present in the claims in substantially similar terms since Applicant filed a response to the first Office Action on February 3, 2003.

Each currently pending independent claim contains the limitation of enabling an authorized user to access data on a remote source. As stated in Applicant’s background section, it is difficult for a user to remember multiple passwords, PINs, and other access information. As claimed, a user device receives access information from a first remote source, and the received access information is subsequently sent to a second remote source to enable to user to access the data on the second remote source. Thus, the user has access to the data without having to remember, or even manually, enter the access information.

Accordingly, Applicant respectfully submits the 35 U.S.C. § 101 rejections are improper. As stated in the Interim Guidelines, a final result of a claimed invention is useful if a practical

application is specifically recited in the claim. Here, the claims contain limitations that recite enabling a user to access data stored on a remote source as a result of the access information being sent by the device, which is a practical application. Thus, the final result of the claimed invention is useful. As stated in the Interim Guidelines, the final result of a claimed invention is tangible if it has a real-world result. Here, the claimed invention allows the user to access data in the real-world. Thus, the final result of the claimed invention is tangible. As stated in the Interim Guidelines, the final result is concrete if it is substantially repeatable. Here, the user is able to access the data consistently and repeatedly because the access information received from the first remote source is sent to the second remote source by the device, hence eliminating the chance that the user will forget or mistype the access information and be denied access to the data. Thus, the final result of the claimed invention is concrete.

### **Conclusion**

Therefore, Applicant's currently pending claims do contain limitations directed to a useful, concrete and tangible final result and are statutory under 25 U.S.C. § 101. Because no art rejections are outstanding, Applicant respectfully requests the Pre-Appeal Conference direct the Examiner to enter an allowance for claims 1-23.

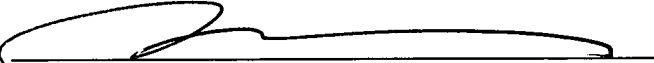
**Deposit Account Authorization**

Authorization is hereby given to charge our Deposit Account No. 02-2666 for any charges that may be due. Furthermore, if an extension is required, then Applicant hereby requests such extension.

Respectfully submitted,

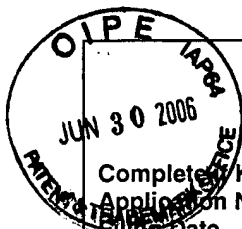
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: JUNE 28, 2006



Sheryl S. Holloway  
Attorney for Applicant  
Reg. No. 37,850

12400 Wilshire Blvd.  
Seventh Floor  
Los Angeles, CA 90025-1026  
(408) 720-8300

**FEE TRANSMITTAL FOR FY 2005**

Effective on 12/08/2004. Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

**TOTAL AMOUNT OF PAYMENT (\$)** 500.00

Complete Known:

Application No. 09/734,839Filing Date 12/11/00First Named Inventor LudtkeExaminer Name MizrahiArt Unit 2165Attorney Docket No. 80398.P416

Applicant claims small entity status. See 37 CFR 1.27.

**METHOD OF PAYMENT** (check all that apply)☒ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify)☐ Deposit AccountDeposit Account Number : 02-2666

Deposit Account Name: \_\_\_\_\_

☒ The Director is Authorized to do the following with respect to the above-identified Deposit Account:☐ Charge fee(s) indicated below.☒ Charge any additional fee(s) or underpayment of fee(s) during the pendency of this application.☐ Charge fee(s) indicated below except for the filing fee☒ Credit any overpayments.☒ Any concurrent or future reply that requires a petition for extension of time should be treated as incorporating an appropriate petition for extension of time and all required fees should be charged.

Warning: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

**FEE CALCULATION****1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Large Entity		Small Entity		Fee Description		Fees Paid (\$)
Fee Code	Fee (\$)	Fee Code	Fee (\$)			
1011	300	2011	150	Utility application filing fee	1,000/500	_____
1111	500	2111	250	Utility search fee		_____
1311	200	2311	100	Utility examination fee		_____
1012	200	2012	100	Design application filing fee	430/215	_____
1112	100	2112	50	Design search fee		_____
1312	130	2312	65	Design examination fee		_____
1013	200	2013	100	Plant filing fee	660/330	_____
1113	300	2113	150	Plant search fee		_____
1313	160	2313	80	Plant examination fee		_____
1004	300	2004	150	Reissue filing fee	1,400/700	_____
1114	500	2114	250	Reissue search fee		_____
1314	600	2314	300	Reissue examination fee		_____
1005	200	2005	100	Provisional application filing fee		_____
SUBTOTAL (1) \$ <u>0</u>						

**2. EXCESS CLAIM FEES**

		<u>Extra Claims</u>	<u>Fee from below</u>	<u>Fees Paid (\$)</u>
<b>Total Claims</b>	_____ - 20 or HP = _____		X _____	= _____
HP = highest number of total claims paid for, if greater than 20				
<b>Independent Claims</b>	_____ - 3 or HP = _____		X _____	= _____
HP = highest number of independent claims paid for, if greater than 3				
<b>Multiple Dependent Claims</b>			_____	= _____

<u>Large Entity</u>		<u>Small Entity</u>		
Fee Code	Fee (\$)	Fee Code	Fee (\$)	<u>Fee Description</u>
1202	50	2202	25	Each claim over 20
1201	200	2201	100	Each independent claim over 3
1203	360	2203	180	Multiple dependent claims, if not paid
1204	200	2204	100	Reissue: each claim over 20 and more than in the original patent
1205	50	2205	25	Reissue: each independent claim more than in the original patent

**SUBTOTAL (2) \$ \_\_\_\_\_**

**3. APPLICATION SIZE FEE**

If the specification and drawings exceed 100 sheets of paper, the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

<u>Total Sheets</u>	<u>Extra Sheets</u>	<u>Number of each add'l 50 or fraction thereof</u>	<u>Fee from below</u>	<u>Fees paid (\$)</u>
_____	- 100 = _____	/ 50 = _____ (round up to whole number)	X _____	_____

<u>Large Entity</u>		<u>Small Entity</u>		
Fee Code	Fee (\$)	Fee Code	Fee (\$)	<u>Fee Description</u>
1081	250	2081	125	Utility
1082	250	2082	125	Design
1083	250	2083	125	Plant
1084	250	2084	125	Reissue

**SUBTOTAL (3) \$ \_\_\_\_\_ 0 \_\_\_\_\_**

**FEE CALCULATION (continued)****4. OTHER FEE(S)**

				<b>Fees Paid (\$)</b>	
<b>Non-English Specification, \$130 fee (no small entity discount)</b>					
<b>Large Entity</b>		<b>Small Entity</b>			
<b>Fee</b>	<b>Fee</b>	<b>Fee</b>	<b>Fee</b>		
<b>Code</b>	<b>(\$)</b>	<b>Code</b>	<b>(\$)</b>	<b>Fee Description</b>	
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for ex parte reexamination	
1813	8,800	1813	8,800	Request for inter parties reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	120	2251	60	Extension for reply within first month	
1252	450	2252	225	Extension for reply within second month	
1253	1,020	2253	510	Extension for reply within third month	
1254	1,590	2254	795	Extension for reply within fourth month	
1255	2,160	2255	1,080	Extension for reply within fifth month	
1401	500	2401	250	Notice of Appeal	
1402	500	2402	250	Filing a brief in support of an appeal	
1403	1,000	2403	500	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	500	2452	250	Petition to revive - unavoidable	
1453	1,500	2453	750	Petition to revive - unintentional	
1501	1,400	2501	700	Utility issue fee (or reissue)	
1502	800	2502	400	Design issue fee	
1503	1100	2503	550	Plant issue fee	
1462	400	1462	400	Petitions to the Commissioner (CFR 1.17(f) Group I)	
1463	200	1463	200	Petitions to the Commissioner (CFR 1.17(g) Group II)	
1464	130	1464	130	Petitions to the Commissioner (CFR 1.17(h) Group III)	
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	790	2809	395	For filing a submission after final rejection (see 37 CFR 1.129(a))	
1814	130	2814	65	Statutory Disclaimer	
1810	790	2810	395	For each additional invention to be examined (see 37 CFR 1.129(b))	
1801	790	2801	395	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	
1504	300	1504	300	Publication fee for early, voluntary, or normal pub.	
1505	300	1505	300	Publication fee for republication	
1803	130	1803	130	Request for voluntary publication or republication	
1808	130	1808	130	Processing fee under 37 CFR 1.17(i) (except provisionals)	
1454	1,370	1454	1,370	Acceptance of unintentionally delayed claim for priority	
Other fee (specify) <u>Pre-Appeal brief</u>					<u>500.00</u>
Other fee (specify) _____					
				<b>SUBTOTAL (4)</b>	<b>\$ 0</b>

\*Reduced by Basic Filing Fee Paid

**SUBMITTED BY:**Typed or Printed Name: Sheryl Sue HollowaySignature: Date: JUNE 23, 2006Reg. Number: 37,850Telephone Number: 408-720-8300

Send to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450